

# Protest and Pandemic

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A 'second wave' of rising infection across Europe was not an unforeseen event, though it had been hoped by many governments that less restrictive and more [targeted measures](#) would be effective at preventing a resurgence of the virus. This has not been the case. As of 4 November, [twenty countries](#) across Europe have now re-introduced either lockdowns or restrictive pandemic measures. The reality that while the pandemic is temporary, it will nevertheless be lengthy, has begun to set in. In response to new restrictions, widespread protests has been [reported across](#) Europe, sometimes resulting in [violent clashes](#) with police forces. Where it is both highly likely that current restrictions will not be the last – particularly following mass-migration during the Christmas period – and protests are likely to increase, what then?

## Protest and pandemic

Protest amid pandemic raises important questions concerning the limit of the rights to assembly and expression; not only where it is a health concern and a vector for infection for large groups gather, but also in the increasing size, intensity and sometimes violence which has accompanied them. As a first point, there is no doubt that throughout Europe, the measures adopted are the most restrictive in contemporary history and often have raised deep concerns from the perspective of [rights](#), the [rule of law](#) and [democracy](#). Protestors not only represent the political fringes objecting to restrictions on liberty, or conspiracy theorists believing in '#fakenews' and 'plandemic', but also (and likely increasingly) to represent workers and business owners negatively affected by the mounting economic costs of successive shutdowns.

Over a [hundred arrests](#) were made in the UK during a protest against the second national lockdown in England which began on 4 November, mirroring a number of smaller acts of protest. One [viral](#) protest grounded itself on *Magna Carta* – a document first issued in 1215 which holds great historical significance but little legal relevance to England and Wales, and none to Northern Ireland nor Scotland – purporting that it allows for '[lawful rebellion](#)' against lockdown. (It does not.) While the merit of argument has been both [ridiculed](#) and [systematically demolished](#), the impetus behind it should not be. It provides important insights into protest amid pandemic. First, the mistaken reliance on Magna Carta underscores that there is no native constitutional rights document in the UK. The right to protest instead arises under the European Convention on Human Rights, as given legal effect by the Human Rights Act 1998 which is [currently at risk](#). (The irony [perhaps lost on many now publicly protesting](#) lockdown is that they have also typically been those who objected to the ECHR which protects their right to do so.) Second, and relevant throughout Europe, how to manage the popular rejection or rules and questioning of legitimacy – and state authorities' responsibility.

The question of responsibility for the consequences has arisen pressingly in Germany, wherein the ‘*Querdenker*’ movement representing far-right and far-left fringes relied on the constitutional right to protest, and a successful appeal to the Higher Administrative Court of Saxony which had ruled that a peaceful assembly could go ahead on condition the protest stayed in one place, was social distanced, and wore masks. While concerns for [violent protest](#) had been raised prior to the planned protest, they nevertheless [manifested](#) in Leipzig where demonstrators flouted requirements, broke police barriers, with [reports of assaults](#) by protestors. Many questions are now being raised concerning responsibility for the ‘*Leipziger-Fiasko*’, particularly as regards the decisions made in the balancing of the rights of expression and assembly over public order and public health. In this case, albeit in hindsight, the balance weighted too heavily in favour of those who did not follow the conditions which make protest both peaceful and legitimate.

This episode may also indicate and mirror a shift away from hypertrophied executive dominance over (and so responsibility for) decision-making during the health emergency, to a trend of judicial and parliamentary responsibility in the form of scrutiny of measures as well as police enforcement for the proportionality of response. In the UK context, it is notable that after months of government regulation with [little oversight](#) and [less parliamentary scrutiny](#), the new lockdown in England was introduced [only following a vote](#) in Parliament. This was not the case for the first lockdown. Scrutiny and oversight must always be welcomed.

## What, then?

There are certainties: we know more of the viral spread; and countless examples worldwide have shown that [earlier reaction](#) is lower transmission, and less restriction. Equally, measures to reduce infection rates are only effective when the greatest majority follow them. But public compliance requires more than the creation of laws. I have [advocated](#) the [essential importance](#) of certainty, transparency, and coordination in both the promulgation of measures and also their application as the most effective means of responding to pandemic. By extension, addressing the impetus for protest – the concerns of those affected – is the most effective mechanism of prevention.

Successful COVID-19 measures can be a victim of their own success. Where rates of transmission or mortality rates become low, there can be a false inference that either the virus is not so serious, or that measures are overreaction (rather than effective). These false narratives feed into conspiracy theories and fake news. It can only be effectively countered by clear, consistent and constant messaging based on sound scientific, economic and legal reasoning, which can also be effective in countering the false dichotomy of choice between protecting public health or the economy.

Simply, legal rules and restrictions must be certain in their [meaning, as well as consistent and prospective in their application](#). While tiered systems are welcome, they must be based on clear, accessible and common rules and published rationale for determining how regions may move from one tier to another. The need for this

is evidenced in [Italy](#), as in [other](#) states throughout Europe, where regional leaders strongly objected about the designation of their regions as coronavirus hotspots with little clear guidance. This relates to the need for transparency as to not only *who* is making the rules, but why they are being made and the rationale underpinning them. Clarity in both the rules and the justifications underlying them, helps citizens understand why they are in place and is foundational to public trust and compliance.

Beyond this, there is an essential requirement for coordination of COVID-19 rules and policies across local, regional and national levels. States with divergent (and inconsistent) regional policies heighten the risk of non-compliance through confusion and uncertainty, but also the frustration of inconsistency where neighbouring regions have different rules. Coordination of COVID-19 measures should also be strongly advocated at EU level, particularly as vaccines and mass rapid-testing become readily available. Coordinated (or at least cross-referenced) tier policies, and promoting common rules on (for example) quarantine, exposure, testing and tracing will be a necessary and effective means of enabling the EU to return to the guarantees of free movement. This is not to advocate an EU regulation (understanding the [limited competence](#) in health policy), but rather to take advantage of the existing frameworks and capacities of the EU to translate and promote common principles among divergent national policies.

A final point to advocate, though not legal principle, is for legislators and authorities to have compassion. The COVID-19 pandemic has [exposed](#) endemic [socio-economic inequalities](#), and the plague of false narratives on real fears. While we are all equally exposed to the virus, we are not all equally affected. The most vulnerable have become the most marginalised by the rules: bearing the burden of national lockdown is far easier with a secure income and a back garden without children or adult dependants. Legislators should take these realities into account in both the design, and application of measures. While the violent or disruptive protest witnessed during pandemic can never be excused nor justified, the underlying causes for concern are real and must be addressed.

